

JAN 5 1996

STATE OF ARIZONA

DEPARTMENT OF INSURANCE
By

DEPARTMENT OF INSURANCE

In the Matter of :)	Docket No. 95-256
)	
Lawrence J. Warfield,)	[Proposed] <i>OK</i>
Special Deputy Receiver)	ORDER DENYING REQUEST FOR
of Trenton National)	HEARING
Insurance Company.)	
)	
)	

The Receiver of Trenton National Insurance Company ("Trenton") having filed a Request for Release of Statutory Deposit and the 1985 premium tax refund totaling approximately \$1,268,268.86 on November 21, 1995 pursuant to A.R.S. § 20-588; the Director of Insurance having issued an "Order Releasing Deposit" in response to Trenton's request On December 1, 1995; Transamerica Commercial Finance Corporation ("Transamerica") and Arcadia General Insurance Company ("Arcadia General") having requested a hearing, claiming that they would be aggrieved by an order releasing the statutory deposit; and having considered the Summary Judgment of the Maricopa County, Arizona Superior Court, Docket No. CV87-28519, the Memorandum Decision of the Arizona Court of Appeals, Docket No. 1 CA-CV 91-0550, and the "Request for Release by Trenton," the "Demand for Hearing by Transamerica and Arcadia General," the "Receiver's Objection to Demand for Hearing by Transamerica and Arcadia General," and the "Department's Joinder with Receiver's Objection to Demand for Hearing by Transamerica and Arcadia General," the Director enters the following Findings of Fact, Conclusions of Law, and Orders:

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FINDINGS OF FACT

1. In 1987, Transamerica and Arcadia General filed a lawsuit, (which subsequent to interventions, became entitled *Transamerica Commercial Finance Corp. and Arcadia General Insurance Company v. State of Arizona, the Arizona Department of Insurance, the Treasurer of the State of Arizona and Trenton National Insurance Company, in Receivership*, in Maricopa County, Arizona Superior Court, Docket No. CV 87-28519), claiming the Arizona statutory deposit for Trenton and subsequently, as the lawsuit was amended, a 1985 premium tax refund.

2. On December 21, 1990, the Superior Court issued a Summary Judgment against Transamerica, Arcadia General, the State Treasurer and the Director of Insurance, jointly and severally, and in favor of the Receiver of Trenton ordering that the Director and the Treasurer "shall release to the Receiver of [Trenton] as an asset of the Receivership Estate, the statutory deposit and any interest thereon" and "shall pay the 1985 tax refund of [Trenton], in the amount of \$52,711.74 plus any accrued interest, to the Receiver of [Trenton]."

3. On December 6, 1994, the Arizona Court of Appeals, under Docket No. 1 CA-CV 91-0550, issued a Memorandum Decision upholding the Superior Court's disposition of the statutory deposit and the 1985 premium tax refund in favor of the Receiver of Trenton.

4. On February 17, 1995, the Arizona Court of Appeals denied the Cross-Motions for Reconsideration of its Memorandum Decision.

1 5. On October 24, 1995, the Arizona Supreme Court denied
2 cross-petitions for review of the Memorandum Decision.

3 6. On November 14, 1995, the Arizona Court of Appeals
4 issued its Mandate to the Maricopa County, Arizona Superior Court
5 requiring it to comply with its Memorandum Decision.

6 7. No legal or factual issues remain concerning Trenton's
7 ownership of the statutory deposit or the premium refund and
8 accrued interest thereon.

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10 **CONCLUSIONS OF LAW**

11 1. Transamerica, Arcadia General, the Receiver of Trenton,
12 the Arizona Treasurer and the Director of Insurance have litigated
13 the issue concerning ownership of the statutory deposit and the
14 1985 premium tax refund held by the Arizona Treasurer.

15 2. The Arizona courts have entered a final judgment in
16 favor of the Receiver of Trenton granting it the immediate right
17 of possession of the statutory deposit and the 1985 premium tax
18 refund.

19 3. The judgment entered in favor of the Receiver of Trenton
20 is res judicata, and cannot be reconsidered by the Director of
21 Insurance.

22 4. As the result of the court decisions, the Director and
23 the Treasurer cannot continue to hold the statutory deposit and
24 1985 premium tax refund.

25 5. No hearing is needed in order for the Director to
26 perform the requested administrative action of entering the Order
to release the funds pursuant to A.R.S. § 20-588, because the

1 requested Order is a purely ministerial act of complying with a
2 final judgment of the Superior Court for Maricopa County and the
3 Memorandum Decision and Mandate of the Arizona Court of Appeals.

4 ORDER

5 IT IS THEREFORE ORDERED,

6 1. Denying the Demand for Hearing of Transamerica
7 Commercial Finance Corporation and Arcadia General Insurance
8 Company; and

9 2. Affirming the December 1, 1995, "Order Releasing
10 Deposit."

11 DATED at Phoenix, Arizona, this 5th day of January,
12 1996.

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CHRIS HERSTAM
16 Director of Insurance
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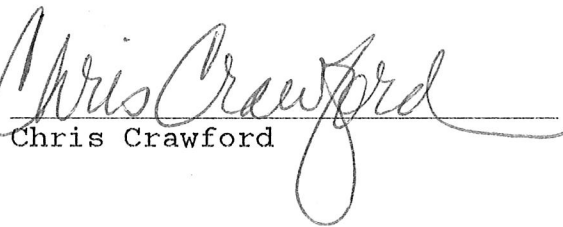
1 COPY of the foregoing mailed/delivered
2 this 5th day of January, 1996, to:

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